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May 16, 2000

The Honorable Vernon Williams
Secretary
Surface Transportation Board
Case Control Unit
Attn: STB Ex Parte No. 582 (Sub-No.1)
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: STB Ex Parte No. 582 (Sub-No. 1)
Major Rail Consolidations



ENTERED
Office of the Secretary

MAY 16 2000

Part of
Public Record

Dear Secretary Williams:

Enclosed for filing in the above captioned docket are the original and twenty-five copies of the Comments of Metra.

Also enclosed with this letter is a diskette with the text of the Comments in WordPerfect 5.X format. Please date stamp the extra copy of this letter, and return it to us for our files.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert P. vom Eigen".

Robert P. vom Eigen

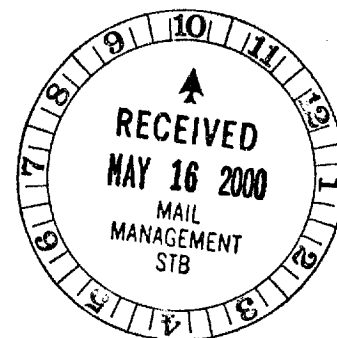
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**BEFORE THE
SURFACE TRANSPORTATION BOARD
Washington, D.C.**

STB Ex Parte No. 582 (Sub-No. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

COMMENTS OF METRA



**ENTERED
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The Commuter Rail Division of the Regional Transportation Authority of Northeast Illinois d/b/a "Metra", through its undersigned counsel, offers the following comments in response to the Board's advanced notice of proposed rulemaking in this proceeding. In summary, Metra recommends that the Board's regulations be changed in three ways:

1. The General Policy Statement on major rail consolidations should be amended to make explicit that if a transaction threatens adverse impacts on commuter or other passenger rail service, those impacts will be weighed as adverse to the public interest and may be remedied through the imposition of conditions on the Board's approval; and conversely that transaction-related changes that reduce impediments to such service will be counted as a favorable factor in the public interest analysis;
2. The procedural rules should be amended to require, prior to the submission of the application, that applicants consult with local commuter authorities to review the preliminary conclusions concerning the impacts or absence of impacts on commuter or other passenger service so that a dialogue can occur prior to finalization of the operating plan to avoid, to the extent possible, the need for commuter authorities to intervene as adversaries once the application is filed; and
3. Post-merger remedies and dispute resolution procedures, short of formal petitions to reopen, need to be established to address service problems that were not anticipated in advance of the approval or that arise notwithstanding applicants' assurances to the contrary.

Statement of Metra's Interest

Metra is the commuter rail authority serving the Chicago metropolitan area, and it transports more than 300,000 passengers each business day in 703 trains serving 241 stations.¹ Last year, Metra provided more than 80 million passenger trips, the largest number in its history. Efficient and precise coordination of Metra's services with those of the freight railroads with which it shares operating corridors, joint facilities or junctions is absolutely essential for Metra to provide dependable service to these customers.

The commuting public will not give up their cars for a public transit option unless the service is absolutely dependable. Metra's success in attracting and retaining riders is directly related to its ability to provide on-time service. Metra typically operates its trains better than 95% "on-time", which means that more than 95% of Metra's trains arrive at the last station in a service corridor within less than six minutes of scheduled arrival times. Last month, the on-time rate was 98.3%. Metra achieves that service record with the help and cooperation of the freight railroads that operate in Chicago. That cooperation is fostered by the creation of a committee of transportation officers for all of the carriers operating in the Chicago terminal.

From time to time Metra does have issues with individual freight partners outside the merger context, and they are not always subject to rapid or satisfactory resolution from Metra's perspective. Most of those disputes do get resolved, for better or worse, in the context of existing contractual arrangements that we maintain with these carriers.

¹ Metra operates 302 trains each Saturday and 176 trains on Sundays and holidays.

In contrast, mergers do possess the potential to disrupt the *status quo ante* in ways never contemplated by the contracts, and special action is merited in those circumstances. Consolidation of dispatching operations to more distant centralized dispatch centers is a common consequence in the merger context, and Metra has incurred service disruptions with such consolidations, notwithstanding assurances from the merging carriers that the transition would move smoothly.² This is particularly the case if operations control is moved to locations distant from Chicago.

Mergers also trigger changes in management personnel. This can be problematic for commuter operations if supervisory transportation employees familiar with a particular commuter operation are to be replaced by people inexperienced in such operations. Personnel changes are of even greater concern where the freight carrier involved provides commuter services on behalf of the commuter authority through purchase of service agreements ("PSA's"). Particularly in the context where a PSA relationship exists, management transition plans of the merging freight carrier must ensure sufficient training and orientation of new managers prior placing them in control of operations in a commuter district.

² The UP/SP merger resulted in the relocation of dispatching functions from Chicago to Omaha with very disappointing results. After considerable discussion among the affected parties, certain of the dispatch functions were returned to Chicago. Following the BNSF merger there were technical and training issues with a move of the dispatching function to Ft. Worth that impacted our service in the Chicago terminal. Even though Metra negotiated agreements with applicants to avoid adverse impacts from the Conrail split up, commuter trains experienced increased delays following the split-up at one junction point. As Metra's on-time data show, these problems do get resolved, but the Board must be vigilant to keep transaction-related disruption at a minimum.

Expand General Policy Statement to Encompass Impacts on Passenger Service

Metra recommends that the Board define the public interest test for reviewing rail consolidation to encompass the “adequacy of transportation services” provided by commuter rail and other passenger carriers. The policy statement is currently silent about these impacts, suggesting that the harms or benefits to be weighed in deciding whether to approve or to impose conditions on a transaction involve only impacts on the freight traffic affected by the transaction. Commuter operations should be viewed as “essential rail service” that should not suffer any deterioration in safety or reliability.

However, adding passenger impacts to the public interest analysis does not represent a significant leap from current Board practice. The Board’s existing regulations acknowledge the relevance of impacts on passenger service to its public interest finding through the requirement that the operating plan describe in detail any delays upon commuter or other passenger service cause by increased freight over applicants’ lines. See 49 C.F.R. §1180.8((a)(2). Indeed, the Board has recognized in the *Conrail Control Proceeding*³ that these consolidations are capable of adversely affecting passenger service, and that the five year monitoring condition imposed by the Board would permit the Board to retain jurisdiction to ensure that “reliable passenger operations” are continued. *Id.* The Board has also construed impacts upon passenger operations as being relevant to its environmental analysis to the extent a consolidation transaction has the potential to increase safety hazards or to impose other adverse environmental consequences by affecting commuter service. *Id.* at 385.

³ *CSX Corporation, et al.-- Control and Operating Leases/Agreements—Conrail, Inc., et al.*, Finance Docket No. 33388, Decision No. 89, served July 23, 1998, Slip op. at 96.

The bottom line for the Board should be that rail consolidations should proceed if they are in the public interest, but the public interest cannot tolerate any deterioration in commuter rail service. If a transaction has the effect of ameliorating an existing impediment to commuter rail service, that benefit should tip the balance in favor of approving the transaction.

Pre-filing Consultation With Commuter Authorities

During the period between the pre-filing notification required under §1180.4(b) and the filing of the application, applicants should be required to consult with local commuter rail authorities that operate trains on shared right of way or at junctions with a party to the transaction to review the preliminary results of the traffic analysis and the preliminary operating plan being devised for the terminal area where the commuter authority operates. If there are system-wide changes, such as a reorganization or consolidation of dispatching centers, those too should be reviewed with the commuter authority.

Applicants are not likely at the pre-filing stage to have engaged in detailed transition planning. However, if changes in the supervisory personnel within the transportation departments of the consolidating carriers are possible, the applicants should at this stage agree to prepare and review with commuter authorities a transition plan that insures that supervisors experienced with specific commuter operations remain in control pending the training and orientation of their replacements. This should be a formal requirement where an applicant maintains a PSA arrangement with a commuter authority.

The concept behind the pre-filing consultation proposal is to permit the commuter authority to offer reactions or to offer resources to solve potential issues

before the cement dries on the applicants' plans. If there are no or insignificant impacts, the dialogue will not be extensive or burdensome. More significant issues should be addressed first outside the litigation context in any event. If a resolution of the commuter agency concerns is not possible after this consultation, it is likely that the dialogue nevertheless will make result in a more efficient adjudication of the dispute. Rail carriers typically devote considerable resources during this pre-filing period to line up shipper support for their transaction, and the process Metra proposes would be an adjunct to that effort. Once completed, applicants can reflect their compliance with the requirement either by attaching a statement of support from the authority or a certificate documenting their consultation efforts.

Post-approval Monitoring and Remedies

The precedent of establishing a five-year monitoring period, during which safety and general service integration, environmental remediation and compliance with other remedial conditions can be scrutinized in annual oversight proceedings, is now a firmly entrenched practice with the Board. Metra believes that the Board should continue this practice.

The Board's notice in this proceeding describes the sentiment of parties for performance measures with enforceable penalties if service failures occur. Metra favors the performance measures, but recommends that the emphasis of the Board's solution for failures be placed upon an efficient remedial process that can address service disruptions or short-comings not anticipated at the time of approval.

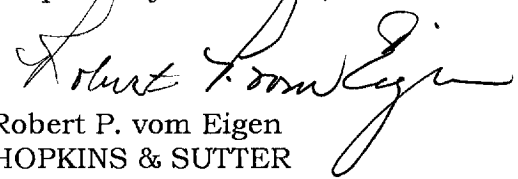
Arbitration, with *Lace Curtain*⁴ - type review by the Board, would be most efficient and effective for addressing disputes over the meaning of representations made by applicants or conditions imposed by the Board in specific factual contexts. The Board's emergency service order jurisdiction and its procedures under Part 1146 of 49 C.F.R. provide an option to deal with short-term solutions for disruptions affecting commuter operations. If new or supplemental conditions need to be imposed, the Board's oversight proceeding is the appropriate forum.

Conclusion

Metra believes that the Board should proceed to update its rail consolidation rules for major transactions. Part of the process should be to make explicit that commuter rail service be regarded as essential service that cannot be degraded or disrupted by virtue of merger or other rail consolidation. The procedures and the remedies should be adjusted to ensure that result.

Michael Noland
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Respectfully submitted,


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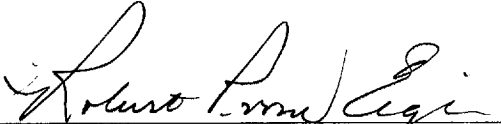
Counsel for Metra

Dated: May 16, 2000

⁴ *Chicago & North Western Tptn. Co. – Abandonment*, 3 I.C.C.2d 729 (1987), *aff'd sub nom., International Broth. Of Elect. Workers V. I.C.C.*, 862 F.2d 330 (D.C.Cir. 1988) ("*Lace Curtain*").

CERTIFICATE OF SERVICE

I hereby certify that on this day of May 16, 2000, I served copies of the Comments of Metra upon all parties of record in this proceeding, by first class mail, postage prepaid.



Robert P. vom Eigen